

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112(A) or (B)

NOTICE OF FINAL RULEMAKING

MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

RULE 100 – GENERAL PROVISIONS AND DEFINITIONS

PREAMBLE

- 1. Sections Affected**
Rule 100 § 200
- Rulemaking Action**
Amend
- 2. Statutory authority for the rulemaking:**
Authorizing statute: A.R.S. § 49-479
- 3. The effective date of the rules:**
November 6, 2002
- 4. List of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 941, March 8, 2002
Notice of Public Meeting on Open Rulemaking Docket: 8 A.A.R. 941, March 8, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 1839, April 12, 2002
Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 2242, May 24, 2002
- 5. Name and address of department personnel with whom persons may communicate regarding the rulemaking:**
Name: Brennan Curry Townsend or Jo Crumbaker
Address: 1001 N. Central Avenue, Suite 695
Phoenix, AZ 85004
Telephone: (602) 506-6710 or (602) 506-6705
Fax: (602) 506-6179
E-mail: bcurry@mail.maricopa.gov or jcrumbak@mail.maricopa.gov
- 6. Explanation of the rule, including the department's reason for initiating the rule:**
Rule 100, § 200.60 (Definition of Major Source)

Maricopa County has amended the definition of major source by deleting the phrase “but only with respect to those air pollutants that have been regulated for that category,” to ensure that the definition of major source fully meets Part 70 requirements under EPA regulations.

On November 27, 2001, the Environmental Protection Agency (EPA) deleted the phrase “but only with respect to those air pollutants that have been regulated for that category” from the paragraph (c)(xvii) Part 70 definition of major source. EPA proposed to delete this phrase in its 1995 supplemental proposal to revise Part 70. See 60 Federal Register (FR) 45530, August 31, 1995.

By deleting the phrase “but only with respect to those air pollutants that have been regulated for that category” from paragraph (c)(xvii) of the Part 70 definition of major source, EPA has declared that states are no longer mandated to require that sources in categories subject to standards under Section 111 or Section 112 promulgated after August 7, 1980 include fugitive emissions in determining major source status under Section 302 or Part D of Title I of the Clean Air Act.

EPA’s change in the definition of major source only applies to industrial facilities or source categories covered by federal air pollution regulations promulgated after August 7, 1980. Sources in these categories are no longer required to count fugitive emissions when determining major source status under the permit program. (Fugitive emissions are considered to be those that are not emitted from smoke stacks, process vents, or storage tanks but rather are emitted from pumps, valves, storage piles, and other sources of pollution in a facility.) Sources will still be required to count all fugitive emissions of compounds that EPA considers to be toxic air pollutants when determining whether they are

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a major source and thus subject to the operating permits program. Under the Clean Air Act, 188 chemicals are listed as toxic air pollutants because they are known or suspected of causing cancer or other serious health problems.

On December 5, 2001, EPA promulgated final, full approval of Arizona's Title V operating permits program. However, in its promulgation EPA stated "States, including the Arizona agencies, must revise their Part 70 programs accordingly, and submit the revision to EPA within 12 months of the date of publication of the final rule." In order to comply with current EPA standards the Arizona Department of Environmental Quality (ADEQ) made the necessary changes to its definition of major source, effective May 24, 2002 and Maricopa County must submit its proposed revision to EPA by November 27, 2002.

Rule 100, § 200.82 (Definition of Portable Source)

Maricopa County has deleted the current definition of portable source and replaced it in order to be consistent with the statutory definition of portable source as written in A.R.S. Title 49 (The Environment), Chapter 3 (Air Quality), Section 49-401.01(25) (Definition of Portable Source). The new definition will read "any stationary source that is capable of being transported and operated in more than one county of this state."

Rule 100 § 200.104 (Definition of Synthetic Minor)

Maricopa County has deleted the current definition of synthetic minor and replaced it to read "any source whose maximum capacity to emit a pollutant under its physical and operational design would exceed the major source threshold levels but is restricted by an enforceable emissions limitation that prevents such source from exceeding major source threshold levels." Currently, Maricopa County's definition of synthetic minor is more narrow than the EPA's definition and the purpose of this amendment is to create a definition that is consistent with the EPA's definition.

7. Demonstration of compliance with A.R.S. § 49-112:

Under A.R.S. § 49-479(c), a county may not adopt a rule that is more stringent than the rules adopted by the director of the ADEQ for similar sources unless it demonstrates compliance with the requirements of A.R.S. § 49-112. In this rulemaking process, Maricopa County has not adopted a rule that is more stringent than the ADEQ's rules for similar sources, therefore no demonstration under A.R.S. § 49-112 is necessary.

8. Reference to any study relevant to the rule that the department reviewed and either relied or did not rely on in its evaluation of or justification for the rule, where the public may review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed in reference to this rulemaking action.

9. Summary of the economic, small business, and consumer impact:

The revisions proposed to Rule 100 will not have an economic impact on businesses in Maricopa County and will not impose additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

10. Description of the changes between the proposed rules, including supplemental notices, and final rules:

Rule 100, § 200.60 (Definition of Major Source)

No changes were made in this Section between the proposed/supplemental and final rule.

Rule 100 § 200.104 (Definition of Synthetic Minor)

No changes were made in this Section between the proposed/supplemental and final rule.

Rule 100, § 200.82 (Definition of Portable Source)

No changes were made in this Section between the proposed/supplemental and final rule.

11. A summary of the comments made regarding the rule and the department response to them:

Normally, Maricopa County would have welcomed comments and discussions about other parts of Rule 100. However, in order for Maricopa County to meet the November 27, 2002 deadline, the county limited comments and discussions to those referencing Rule 100, Section 200.60 (Definition of Major Source), Rule 100, Section 200.82 (Definition of Portable Source), and Rule 100, Section 200.104 (Definition of Synthetic Minor).

Comment 1: We are pleased to learn that Maricopa County Environmental Services Division (MCESD) is changing the definition of portable source to the state statutory definition.

Response: MCESD appreciates the comment.

Comment 2: We are pleased that MCESD will not permit non-road engines.

Response: Maricopa County is participating in ongoing discussions with the Arizona Department of Environmental Quality (ADEQ) about how to treat non-road engines and therefore *has not* developed a bright line rule with respect to permitting requirements for portable engines. Both MCESD and ADEQ have researched and discussed the issue internally and with other air pollution control agencies of Arizona. All agencies believe that consistency in the application of air quality programs is the desired goal. ADEQ and MCESD have formed a work group to specifically address the non-road issue and any inconsistencies in the application of air quality programs. Because this issue is still under discussion, MCESD has not expressly decided to exempt all portable engines from permitting requirements. Rather, permitting decisions will be made on a case by case basis when a source employs a portable engine to supply material or energy output to the source.

Comment 3: We request that MCESD explicitly state in the rule that non-road engines are not subject to County regulations by either 1) revising the definition of stationary source to match the federal statutory definition, or 2) revising the definition of portable source to exclude non-road engines.

Response: MCESD did not propose these recommended changes in either its original or supplemental notice of proposed rulemaking. Though the Clean Air Act expressly excludes non-road engines from the definition of stationary sources, states are not precluded from regulating non-road engines through a permitting program. The state of Arizona, through ADEQ, has not elected to exempt non-road engines from its permit requirements at this time.

Under Arizona law, a county’s rules “shall contain standards at least equal to or more restrictive than those adopted by the director [of ADEQ].” (A.R.S. § 49-479.) If Maricopa County were to completely exempt non-road engines from permit requirements, its rule regarding this matter would be less strict than the state’s and would therefore violate A.R.S. § 49-479. For this reason, Maricopa County cannot adopt an exemption for non-road engines in this rule-making procedure.

12. Any other matters prescribed by the statute that are applicable to the specific department or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously an emergency rule?

No

15. The full text of the rules follows:

**REGULATION I - GENERAL PROVISIONS
RULE 100 – GENERAL PROVISIONS AND DEFINITIONS
SECTION 200 – DEFINITIONS**

SECTION 200 - DEFINITIONS

- 200.1 No change
- 200.2 No change
- 200.3 No change
- 200.4 No change
- 200.5 No change
- 200.6 No change
- 200.7 No change
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- 200.51 No change
- 200.52 No change
- 200.53 No change
- 200.54 No change
- 200.55 No change
- 200.56 No change
- 200.57 No change
- 200.58 No change
- 200.59 No change
- 200.60 MAJOR SOURCE -
 - a. No Change
 - b. No Change
 - c. A major stationary source, as defined in Section 302 (Definitions) of the Act, that directly emits or has the potential to emit 100 tpy or more of any air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purpose of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
 - Coal cleaning plants (with thermal dryers).
 - Kraft pulp mills.
 - Portland cement plants.

Primary zinc smelters.
Iron and steel mills.
Primary aluminum ore reduction plants.
Primary copper smelters.
Municipal incinerators capable of charging more than 50 tons of refuse per day.
Hydrofluoric, sulfuric, or nitric acid plants.
Petroleum refineries.
Lime plants.
Phosphate rock processing plants.
Coke oven batteries.
Sulfur recovery plants.
Carbon black plants (furnace process).
Primary lead smelters.
Fuel conversion plants.
Sintering plants.
Secondary metal production plants.
Chemical process plants.
Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input.
Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
Taconite ore processing plants.
Glass fiber processing plants.
Charcoal production plants.
Fossil fuel-fired steam electric plants of more than 250 million BTU per hour rated heat input.
~~All~~ Any other stationary source ~~categories regulated by a standard promulgated category which~~ as of August 7, 1980 is being regulated under Section 111 (Standards Of Performance For New Stationary Sources) of the Act or under Section 112 (National Emission Standards For Hazardous Air Pollutants) of the Act, ~~but only with respect to those air pollutants that have been regulated for that category.~~

- 200.61 No change
- 200.62 No change
- 200.63 No change
- 200.64 No change
- 200.65 No change
- 200.66 No change
- 200.67 No change
- 200.68 No change
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- 200.75 No change
- 200.76 No change
- 200.77 No change
- 200.78 No change
- 200.79 No change
- 200.80 No change
- 200.81 No change
- 200.82 PORTABLE SOURCE -

~~Any building, structure, facility, or installation subject to regulation under A.R.S. § 49-426 which emits or may emit any air pollutant and which is capable of being operated at more than one location. Any stationary source that is capable of being transported and operated in more than one county of this state.~~

- 200.83 No change
- 200.84 No change
- 200.85 No change
- 200.86 No change
- 200.87 No change
- 200.88 No change
- 200.89 No change

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- 200.90 No change
- 200.91 No change
- 200.92 No change
- 200.93 No change
- 200.94 No change
- 200.95 No change
- 200.96 No change
- 200.97 No change
- 200.98 No change
- 200.99 No change
- 200.100 No change
- 200.101 No change
- 200.102 No change
- 200.103 No change
- 200.104 SYNTHETIC MINOR -

~~A source, which voluntarily proposes in its application and accepts in its permit, emissions limitations, controls, or other requirements, which are permanent, quantifiable, and enforceable, which, if part of a federally enforceable permit program, will enable such source to avoid classification as a source that requires a Title V permit. Any source, whose maximum capacity to emit a pollutant under its physical and operational design would exceed the major source threshold levels but is restricted by an enforceable emissions limitation that prevents such source from exceeding major source threshold levels.~~

- 200.105 No change
- 200.106 No change
- 200.107 No change
- 200.108 No change
- 200.109 No change
- 200.110 No change